

**United Brotherhood of Carpenters and Joiners of America, Local 296 (Acrom Construction Service Co., Inc.) and Jay Buffington.** Case 29-CB-7412

December 10, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND RAUDABAUGH

On July 23, 1991, Administrative Law Judge Jesse Kleiman issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Brotherhood of Carpenters and Joiners of America, Local 296, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*James Patrick Kearns, Esq.*, for the General Counsel.  
*Ira A. Sturm, Esq. (Manning, Raab, Dealy & Sturm, Esqs.)*,  
of New York, New York, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

JESSE KLEIMAN, Administrative Law Judge. The charge was filed by Jay Buffington on October 18, 1989, and the complaint was issued on December 29, 1989. The complaint alleges that United Brotherhood of Carpenters and Joiners of America, Local 296 (the Respondent Union) engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act) by causing the discharge of Jay Buffington because of his delinquency in the payment of his dues for the fourth quarter of 1989, notwithstanding the Respondent Union's failure to give Buffington a reasonable period of time to pay such dues. The Respondent Union filed its answer on January 3, 1990, denying the material allegations in the complaint. This case was

tried in Brooklyn, New York, on October 24 and November 19, 1990.

On the entire record and the brief memoranda filed by the General Counsel and the Respondent Union and on my observation of the witnesses, I make the following

**FINDINGS OF FACT**

**I. THE BUSINESS OF THE EMPLOYER**

Acrom Construction Service Co., Inc. (the Employer and/or Acrom), a New York Corporation with its principal office and place of business located at 111 Eighth Avenue, New York, New York, and with various jobsites in the New York metropolitan area including a jobsite at 400 92d Street, Brooklyn, New York, is engaged in the business of providing carpentry services in the building construction industry and related services. During the past year, the Employer has purchased and received at its various jobsites located in the State of New York products, goods, and materials valued in excess of \$50,000 directly from points outside the State of New York in the conduct of its business operations. The Respondent Union admits and I find that Acrom Construction Service Co., Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

**II. THE LABOR ORGANIZATION INVOLVED**

It is uncontested and I find that the Respondent Union, and the District Council of New York and Vicinity of the United Brotherhood of Carpenters and Joiners of America (the District Council), of which the Respondent Union is a constituent Local, are labor organizations within the meaning of Section 2(5) of the Act. Additionally, it is uncontested that Philip Fulgieri is the Respondent Union's business agent and an agent acting in its behalf within the meaning of Section 2(13) of the Act.<sup>1</sup>

<sup>1</sup> The complaint also alleges that Thaddeus Rougier, the shop steward at the jobsite involved here, is an agent of the Respondent Union acting on its behalf. The Respondent Union denies that Rougier "was acting in the capacity of agent for the union." In *Teamsters Local 886 (Lee Way)*, 229 NLRB 832 (1977), the Board, in deciding whether a shop steward is an agent of a union stated that, "Rather responsibility attaches if, applying the 'ordinary law of agency,' it is made to appear the union agent was acting in his capacity as such." It is enough if the principal actually empowered the agent to represent him in the general area within which the agent acted. *Longshoremen Local 6 (Sunset Line)*, 79 NLRB 1487, 1509 (1948). And where common law rules of agency govern, authority may be implied or apparent, as well as express. *NLRB v. Electrical Workers IBEW Local 3*, 467 F.2d 1158 (2d Cir. 1972). In the instant case, as was true in *Teamsters Local 886*, supra, the shop steward was on the jobsite to ensure employer compliance with the terms and conditions of the collective-bargaining agreement, had authority to handle problems arising between the employees and their foreman "if its something small," transmitted messages and information from and authorized by the Respondent Union to its members, maintained employee work dates and hours and with the job foreman verified this information for the Respondent Union, and additionally collected dues payments from members and informed them of this obligation. Thus, I find and conclude that Thaddeus Rougier was an agent of the Respondent Union, acting on its behalf within the meaning of Sec. 2(13) of the Act, at all times material.

## III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Evidence*

*Background:* The Building Association, Inc. (the Association) has been an organization composed of employers engaged in the building construction industry and which exists for the purpose, inter alia, of representing its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations including the District Council. The Employer is an employer-member of the Association. The District Council has been recognized by the Association on behalf of its constituent Locals, including the Respondent Union, as the exclusive collective-bargaining representative of an appropriate unit of its employer-members' carpenter and joiner employees including, inter alia, the employees of the Employer. Such recognition has been embodied in a series of collective-bargaining agreements, the most recent of which was effective by its terms from July 1, 1987, to June 30, 1990. This agreement contained a valid union-security provision.

*What Occurred Prior to October 16, 1989:* Jay Buffington, a carpenter, has been a member of the Respondent Union since 1983. Prior thereto, Buffington had worked as a union carpenter on and off since 1965. In late 1987, Buffington was referred by the Respondent Union to Acrom Construction Service Co., Inc. for a carpenters position. On January 31, 1988, Buffington discontinued his job with Acrom because of a work-related injury. He returned to work with this Employer on September 1, 1989. At the time Buffington resumed his employment with Acrom, he was earning approximately \$25 hourly, and union dues were \$80 quarterly payable on or before the first day of the month starting that quarter, with a 15-day grace period. Buffington admittedly was fully aware of his obligation to pay dues quarterly, the actual amount of such dues, and the 15-day grace period for payment thereof.

Thaddeus Rougier, a witness for the Respondent Union and the shop steward on the jobsite,<sup>2</sup> testified that on two or three occasions, in late September and early October 1989, he advised the union members on the construction site, including Buffington, that their union dues were due October 1, and that they could make such payments through him to the Respondent Union. Rougier offered to collect their dues and payment books, bring these to the Respondent Union where the dues payments would be recorded, and then return the payment books and current union cards to the members. Rougier stated that during the next few days after his announcements about the dues, all the union members on the jobsite, except for Buffington, gave him their dues payments to bring to the Respondent Union. Rougier added that during this period, Buffington never offered any explanation as to why he was not paying his dues although Rougier had asked Buffington personally once or twice about his dues payment. However, although Buffington testified that he could not remember if Rougier had spoken to him about his dues payment prior to October 16, 1989, he also previously testified that October 16, 1989, was "the first contact I had about union dues" with Rougier.

In setting forth what occurred thereafter on October 16 and 17, 1989, it should be noted that the record evidence strongly

suggests that both Buffington and Rougier confused in their testimony the dates on which certain statements were actually made, as will be specifically referred to hereinafter.

*What Occurred on October 16, 1989:* Buffington testified that on Monday, October 16, 1989, while working on the Acrom jobsite, he was approached by Rougier who asked him if he had his union card. Buffington told Rougier that he had his last quarters paid up union card, acknowledged that he was 16 days late in paying his current union dues, indicated that he didn't have the money to pay for a new union card at that time, and mentioned to Rougier that, "Friday was payday and if it was that important, I would go to the bank. You know, when I cashed my check I would [pay] up in full."<sup>3</sup> According to Buffington, Rougier responded that Buffington had to pay his union dues and obtain a current union card by the following day, Tuesday, October 17, 1989, "or would be thrown off the job." Buffington stated that he advised Rougier that he was short of funds and could not pay the union dues by Tuesday,<sup>4</sup> and that it would be illegal to remove him from his job "like that." Buffington continued that Rougier "shrugged his shoulders" and said that he was only doing what he was told. Buffington added that after he left work that day, he went to the National Labor Relations Board's Region 29 offices where he spoke to Board Agent Feuer about his encounter with Rougier and about his union dues obligations.<sup>5</sup>

Rougier's version of his conversation with Buffington on October 16, 1989, is significantly different in certain aspects than that given by Buffington as recited above. Rougier testified that after Buffington had told him that he did not have a current union card, Rougier called the Respondent Union's business agent, Philip Fulgieri and apprised him of this. Rougier stated that Fulgieri then instructed him to tell Buffington that he had three choices, *to wit*, to go to the Respondent Union and pay his dues, to be terminated, or to be brought up on charges. Fulgieri also told Rougier to have Buffington call Fulgieri directly. Rougier related that when he repeated to Buffington what Fulgieri had said, and asked Buffington to call Fulgieri, Buffington said that "he didn't have the quarter." Rougier denied that Buffington had told

<sup>3</sup>In an affidavit dated October 31, 1989, given to a Board agent during the investigative stage of these proceedings, Buffington makes no mention of his having told Rougier that he would pay his union dues in full on Friday, October 20, 1989, after cashing his paycheck, in recounting therein what had occurred on October 16, 1989. Nor does Buffington, in his own notes of what transpired on October 16, 1989, made "very shortly" after they happened, mention that he said this to Rougier.

<sup>4</sup>The evidence here shows that on October 16, 1989, Buffington had deposits in the Greenpoint Savings Bank of \$851.73 in a savings account and at least \$1,665.31 in a checking account. Concerning these accounts, Buffington testified that these moneys were scheduled for a "joint venture between me and my wife" involving real estate and therefore not his own moneys, although Buffington acknowledged that such funds had been "put in by me."

<sup>5</sup>It would appear from the evidence here, that Buffington visited the Board's offices on October 17 rather than October 16, 1989. See G.C. Exh. "6" (Buffington's letter to the Respondent Union dated "10/17/89"). Buffington states therein that "on the date mentioned above," which is October 17, 1989, he left work 1 hour earlier in order to "contact Mr. Feuer at the Federal Labor Board."

<sup>2</sup>Rougier is also known as "Mr. T" on the jobsite.

him during their conversation on October 16, 1989, that he had no money to pay his union dues.<sup>6</sup>

*What Occurred on October 17, 1989:* Buffington testified that on Tuesday, October 17, 1989, soon after he appeared on the jobsite and went to the "gang box" to secure his tools, Rougier came over and again asked him if he had obtained a new union card and Buffington answered, "no." Rougier told Buffington that "I was going to have to get my dues paid up." When Buffington said that he didn't have the money to pay his dues, Rougier told him that he had three choices, either to pay his union dues, be thrown off the job, or be brought up on union charges. Buffington asked Rougier to call Fulgieri and "tell him what the situation was," but Rougier told Buffington to make the call himself. According to Buffington's reiteration of a portion of his "verbatim conversation" with Rougier as set forth in his letter to the Respondent Union dated 10/17/89, Buffington replied:

No-no, I don't have the quarter. You tell [Fulgieri] he can throw me off the job and I'm going to take it to the labor board and I'll sue his pants off. O.K. You want me off the job I'll leave.<sup>7</sup>

Buffington indicated that Rougier said, "I only do what I am told to do."

Buffington continued that he remained working on the job until later that morning when the construction foreman came over to him and said that Fulgieri wanted Buffington to call him at "the local," which Buffington did. Fulgieri told Buffington that he had to pay his union dues. Buffington explained to Fulgieri "what the situation was," that although he was unable to pay his union dues at the time he had money in his annuity fund and vacation pay that could serve as collateral. Buffington stated that he told Fulgieri, "Friday I'll have my check," but that Fulgieri said that, "I don't give a damn," asked what Buffington intended to do about paying his union dues and then hung up.

Regarding this telephone conversation, Fulgieri testified that he told Buffington that he had to pay his union dues, that he was no different than any other union member, that this was required under the Union's dues otherwise he would be "removed from the job until he pays his dues."

According to the record evidence, Buffington left work early on October 17, 1989, and visited New York State Senator Mayger's office where he was told that "they would write a letter to the local on my behalf." Buffington also went to the Board's Region 29 offices where he spoke to Board Agent Feuer regarding his union dues obligations. That evening Buffington wrote a letter to the Respondent Union in which he related what had occurred between Rougier and himself that day, and allegedly on Feuer's advice that he send "some kind of payment to the union" he was enclosing a check in the amount of \$18.48 for the period

October 1 through 21, 1989, as partial payment of his union dues because he believed he had the right to pay his quarterly dues in weekly installments of \$5.16 each until he was paid in full.<sup>8</sup> Buffington also stated therein that he had been advised that the Respondent Union's "tactics" toward him were illegal and subject to "back pay" or other Board remedy for unfair labor practices should the Respondent Union cause his termination or bring him up on charges for failing to pay his union dues.<sup>9</sup> This letter with its enclosed check was not received by the Respondent Union until October 21, 1989. Moreover, although Buffington testified that he told Rougier and Fulgieri that he was waiting until the Friday 20, 1989 payday to cash his check and pay his union dues, he failed to mention this in his letter of October 17, 1989, to the Respondent Union.<sup>10</sup>

*What Occurred on October 18, 1989:* When Buffington reported for work on Wednesday, October 18, 1989, at 7 a.m. he found Fulgieri and Rougier waiting at the jobsite. Fulgieri asked him if he had his union card and Buffington said "no," he only had his old union card. Fulgieri then told Buffington that if he didn't have a current union card he could not work.<sup>11</sup> According to Buffington, about 20 minutes later he observed Fulgieri and Rougier in conversation with the job foreman who then approached Buffington and told him that he had to leave minutes later he observed Fulgieri and Rougier in conversation with the job foreman who then approached Buffington and told him that he had to leave the jobsite. Buffington asked the foreman if he was being laid off and the foreman said, "It's not a layoff." Buffington also asked the foreman if he was acting at Fulgieri's directions and the foreman responded, "That's correct." Buffington then went and secured his tools from the gang box and went home. Buffington denied that the foreman had told him, "[G]et your things squared away with the union and come back to work."<sup>12</sup> Moreover, despite Buffington's admission that he was aware of the "union rule that you have to be paid on your last day of work," he was not paid on October 18, 1989, on his supposed termination by the job foreman.

<sup>8</sup> It seems that the idea to make weekly payments was Buffington's own idea after Feuer allegedly told him to "pay them something."

<sup>9</sup> This letter also made reference to two previous requests for "a transfer from Local 296," which were "totally ignored." Buffington continues therein:

Due to the irreconcilable differences that have over time come between us I am again making a third and final request.

If this request is ignored or denied I will bring it up before the Civil Court of New York for litigation.

Moreover, the check sent along with this letter was drawn on his Greenpoint Savings Bank checking account.

<sup>10</sup> There are several possible reasons for this, i.e., that he was sending partial payment which he believed would negate his requirement to pay in full by Friday, October 20, 1989, or he never said this, or he inadvertently forgot to include it in this letter.

<sup>11</sup> However, in Buffington's notes of what occurred on October 18, 1989, Buffington only relates that he told Fulgieri that he was "reporting to work and then entered the building," with no mention that Fulgieri told him "no card, you can't work." Buffington explained that he forgot to include this in his notes.

<sup>12</sup> I noted that at times, this being one of them, Buffington's answers appeared to be evasive and at other times forgetful although Buffington made notes of his conversations with Rougier and Fulgieri soon after they occurred, and was apparently in the habit of taping such when the occasion presented itself.

<sup>6</sup> It appears from the evidence here that Rougier was mistaken about when he advised Buffington as to what Fulgieri had said about what would happen if he failed to pay his dues, this actually occurring on October 17 rather than October 16, 1989. See G.C. Exh. "6" and 102-103 of the record transcript here. I believe that Rougier told Buffington at this time that he had to pay his dues or be taken off the job.

<sup>7</sup> Buffington indicated that he had taped his conversation with Rougier on October 17, 1989, and it appears that this was taken off that tape.

*Additional Evidence:* On Friday, October 20, 1989, Buffington returned to the Acrom jobsite to pick up his paycheck. The foreman asked Buffington if Rougier had said anything to him about coming back to work and Buffington answered "no." Buffington made partial payments by check of \$6.16 each toward the union dues he owed on October 21 and 30 and November 3, 1989.

Buffington testified that on prior occasions he had been late in paying his union dues sometimes "a month and a half" without the Respondent Union taking any disciplinary action against him such as removal from his job or bringing him up on charges. Buffington also related that he knew of other union members who had been late in paying their union dues without being terminated from their jobs or brought up on charges by the Respondent Union, one union member being in arrears for approximately 1 year, and another member, Nick Basile, whose father is an "officer" of the Respondent Union. However, on cross-examination Buffington disclosed that in the instances wherein he had been late in paying his union dues he had either been out on disability leave at the time or otherwise out of work, that the union member who had not paid his dues for about a year was actually a member of a different local union of the Carpenters, and that Basile's father had paid his son's dues for that period although a week late.

Also, the constitution and laws of the United Brotherhood of Carpenters and Joiners of America, the parent union, provides:

Monthly dues shall be charged on the books on the first of each month, but a member does not fall in arrears until the end of the month in which the member owes three month's dues. No officer or member shall be exempt from paying dues or assessments, nor shall the same be remitted or cancelled in any manner. Credit for payment of any month's dues will not be granted based on partial payment but only on full payment of that month's dues.

Moreover, the bylaws and working rules of the District Council provides:

Section 26A. Each member of a Local Union shall be charged nine dollars and seventy-five cents (\$9.75) per quarter for the work card to be paid to the Financial Secretary of his Local Union.

Section 26E. All members of the United Brotherhood must carry the work card of the current quarter and shall be in possession of same no later than the fifteenth (15th) of the first month of the quarter. Members who fail to comply with this Section shall be subject to removal from the shop or job under the terms of the collective bargaining agreement there applicable.

It seems that the \$80 quarterly payment required by the Respondent Union's members as dues payment includes union dues and the work card cost.

## B. Analysis and Conclusions

### 1. Credibility

Based on a careful analysis of the testimony of the witnesses and the evidence presented here, my observation of

the demeanor of the witnesses, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole,<sup>13</sup> I tend to credit the account of what occurred here, as given by the Respondent Union's witnesses Rougier and Fulgieri, but only where it is in conflict with the testimony of Buffington, the General Counsel's main witness. On the one hand, I noted some confusion by Rougier as to the date that a particular conversation took place, and, in some important respects, the testimony of Rougier and especially that of Fulgieri was substantially less detailed than that given by Buffington. I also felt that their testimony was given in a forthright manner and was generally corroborative and consistent with the other evidence in the record as far as it went and therefore more believable. On the other hand, although I admit that I was impressed with Buffington's demeanor as a witness, still I found that his testimony at times appeared guarded, defensive, and evasive, especially on cross-examination and contained inconsistencies with regard to his own prior statements in the form of an affidavit given to a Board agent, and his own notes of occurrences relevant here, as set forth hereinbefore. I therefore will discredit his testimony only where it conflicts with that of Rougier or Fulgieri, or where it is contradicted by other uncontroverted evidence in the record.<sup>14</sup>

### 2. The alleged violations of Section 8(b)(1)(A) and (2) of the Act

The complaint alleges that the Respondent Union, by attempting to cause and causing the Employer to discharge Buffington because he was delinquent in paying his quarterly dues notwithstanding the Respondent Union's failure to give Buffington a reasonable period of time to pay such dues, restrained and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act thereby violating Section 8(b)(1)(A) and (2) of the Act. The Respondent Union not only denied this allegation but asserts as a defense that the 8(b)(1)(A) allegation must be dismissed because it was never alleged in the underlying charge. After alleging unfair labor practices within the meaning of Section 8(b)(2) of the Act, the charge states:

Since on or about October 18, 1989, the above-named labor organization by its officers, agents, and representatives caused the below-named Employer to terminate the employment of Jay Buffington, whose membership in the labor organization was terminated for reasons other than failure to tender periodic dues uniformly required as a condition of retaining membership there. By these and other acts, the above-named labor organization has restrained and coerced employees within the meaning of Section 7 of the Act.

It is well settled that a complaint may issue under Section 10(b) of the Act alleging matters not set forth with specific-

<sup>13</sup> *Gold Standard Enterprises*, 234 NLRB 618 (1978); *V & W Castings*, 231 NLRB 912 (1977); *Northridge Knitting Mills*, 223 NLRB 230 (1976).

<sup>14</sup> It is not unusual that, based on the evidence in the record, the testimony of a witness may be credited in part, although other segments thereof are discounted or disbelieved. *Jefferson National Bank*, 240 NLRB 1057 (1979), and cases cited therein.

ity in the underlying charge, provided the complaint allegations assert matters closely related to the allegations of a timely filed charge.<sup>15</sup> The Supreme Court in *NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959), in discussing the Board's authority to discharge its duty of protecting public rights, held that:

[T]he Board is not precluded from "dealing adequately with unfair labor practices which are related to those alleged in the charge and which grow out of them while the proceeding is pending before the Board. *National Licorice Co. v. NLRB*, 309 U.S. 350 at 369.

Consistent with *Fant Milling*, the Board has long required a sufficient factual relationship between the specific allegations in the charge and the complaint allegations that looks toward the class of violations alleged in the pending charge, the sequence of events, and the nature of the defenses raised.<sup>16</sup>

In considering the general sufficiency of a charge to support an allegation in the complaint, the Board has usually required that the complaint allegation be related to and arise out of the same situation as the conduct alleged to be unlawful in the underlying charge, although it need not be limited to the specific violations alleged in the charge.<sup>17</sup>

Moreover, in *Painters Local 277 v. NLRB*, 717 F.2d 805 (3d Cir. 1983), the United States Court of Appeals for Third Circuit, although acknowledging that Section 8(b)(1)(A), which prohibits coercion of employees by a union, and Section 8(b)(2), prohibiting a union from causing or attempting to cause an employer to discriminate against an employee, are separate violations of the Act, also recognized that:

[T]he two sections often work in tandem. . . . A finding that a union provoked or attempted to provoke discrimination in violation of section 8(b)(2) is usually accompanied by a finding that the same conduct constituted coercion in violation of section 8(b)(1)(A).<sup>4</sup>

<sup>4</sup>The relationship between the two sections is analogous to the relationship between sections 8(a)(1) and 8(a)(3), which are often used together to charge an employer with unlawful coercion and discrimination. In such cases, the Court of Appeals for the Seventh Circuit terms the section 8(a)(1) violation a "derivative violation" which follows from the violation of Section 8(a)(3) and is proved by the same conduct.

In applying the above law to the facts in this case, I find and conclude that the complaint allegations here "are related to those alleged in the charge and which grow out of them," *NLRB v. Fant Milling Co.*, supra, and meet the Board's "closely related" test in interpreting Section 10(b) of the Act. *NLRB v. Dinion Coil Co.*, supra; *Redd-I*, supra.

The evidence in the record shows that the allegations in both the complaint and the charge arise from the same sequence of events, similar conduct during the same time pe-

riod with a similar objective (to remove Buffington from the job because of his failure to pay his union dues and obtain a current work card), the same situation; it would appear that the Respondent Union would have to prepare and present its case as it would similarly have done in defending against the allegations in both the complaint and the charge and raise the same defenses (that it did not unlawfully attempt to or did have Buffington removed from his job because of his failure to pay union dues and obtain a current work card); and the allegations in the charge and the complaint are so interrelated under the facts present in this case as to be reasonably considered to involve the "same class" of violations and "the same legal theory."<sup>18</sup> Moreover, as the Board stated in *Valley Cabinet & Mfg.*, 253 NLRB 98, 100 at fn. 10 (1980):

The Union has excepted to the Administrative Law Judge's conclusion that it violated Sec. 8(b)(1)(A) as well as Sec. 8(b)(2) of the Act by failing to properly notify Murphy of her dues obligations before requesting her discharge. The Union contends that a violation of Sec. 8(b)(1)(A) of the Act was not alleged in the complaint, and that the Administrative Law Judge therefore had no basis for finding such a violation. As the underlying facts pertaining to a violation of Sec. 8(b)(1)(A) of the Act are identical to those upon which the 8(b)(2) violation is premised and the legal theory for both violations is identical, we adopt the Administrative Law Judge's conclusion that the Union also violated Sec. 8(b)(1)(A) of the Act by failing in its fiduciary duty to Murphy. *H. C. Macaulay Foundry Company*, 223 NLRB 815, 818, enf'd. 553 F.2d 1198.

I therefore deny the Respondent Union's motion to dismiss the 8(b)(1)(A) allegation in the complaint.<sup>19</sup>

The Board has consistently held that a union seeking to enforce a union-security provision against an employee has a fiduciary duty to deal fairly with that employee, taking "the necessary steps to make certain that a reasonable employee will not fail to meet his membership obligations through ignorance or inadvertence but will do so only as a matter of conscious choice."<sup>20</sup> This requires that before a

<sup>18</sup>*NLRB v. Fant Milling Co.*, supra; *Advertisers' Mfg. Co.*, supra; *Davis Electrical Constructors*, supra; *Redd-I*, supra; *NLRB v. Dinion Coil Co.*, supra.

<sup>19</sup>In *G. W. Galloway Co. v. NLRB*, 856 F.2d 275 (D.C. Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit held that the Board "may not unilaterally expand its power to issue complaints merely by relying on the 'other acts' language in the preprinted charge form. There must be a significant factual relationship between the allegations in the charge and those in the complaint." The court felt that to allow this would violate 10(b)'s mandate that the Board not originate complaints on its own initiative. The Board adopted this ruling in *Nickles Bakery of Indiana*, 296 NLRB 927 (1989). Thus the statement in the charge here that, "By these and other acts, the above-named labor organization has restrained and coerced employees within the meaning of Section 7 of the Act" would not justify the 8(b)(1)(A) allegation in the complaint where the charge does not otherwise allege such a violation unless the "closely related" test is satisfied, as found here.

<sup>20</sup>*Communications Workers Local 9509 (Pacific Bell)*, 295 NLRB 196 (1989); *Boilermakers Local 732*, 239 NLRB 504 (1978); *Conduction Corp.*, 183 NLRB 419 (1970); *Hotel Employees Local 568 (Philadelphia Sheraton)*, 136 NLRB 888 (1962), enf'd. 320 F.2d 254 (3d Cir. 1963). Also see *NLRB v. Construction & Building Material Teamsters*, 633 F.2d 1295 (9th Cir. 1980).

<sup>15</sup>*NLRB v. Fant Milling Co.*, 360 U.S. 301 (1959); *NLRB v. Dinion Coil Co.*, 201 F.2d 484 (2d Cir. 1982); *Redd-I*, 290 NLRB 1115 (1988).

<sup>16</sup>*Advertisers' Mfg. Co.*, 294 NLRB 740 (1989); *Davis Electrical Constructors*, 291 NLRB 115 (1988); *Redd-I*, supra.

<sup>17</sup>*Nickles Bakery of Indiana*, 296 NLRB 927 (1989); *El Cortez Hotel*, 160 NLRB 1442 (1966), aff'd. 390 F.2d 127 (9th Cir. 1968); *Stainless Steel Products*, 157 NLRB 232 (1966).

union may seek the discharge of an employee for the failure to tender owed dues and fees, it must at a minimum give the employee reasonable notice of the delinquency, including a statement of the precise amounts and months for which dues are owed and of the method used to compute the amount, tell the employee when to make the required payments and explain to the employee that failure to pay will result in discharge.<sup>21</sup> Moreover, the union must also afford the employee a reasonable opportunity to make payment following adequate notice, before requesting his discharge.<sup>22</sup>

In the instant case the credited evidence here shows that the Respondent Union, through its agent Rougier, gave Buffington reasonable notice of his union dues obligations in late September 1989 and of his dues delinquency in October 1989 prior to his termination on October 18, 1989; advised him of the amount owed and for what period in question, \$80 for the quarter beginning October 1, 1989; and that his failure to pay the union dues owed, first by October 17, 1989, and then by October 18, notwithstanding that the grace period to pay such dues expired on October 15, 1989, would result in his being terminated from his job on the Acrom construction site. Apparently the General Counsel acknowledges this because in both the complaint and his brief it is alleged only that the Respondent Union violated the Act, “[B]y failing to give Buffington an adequate opportunity to satisfy his dues obligations. Respondent, by steward Rougier, notified Buffington for the first time on [October] 16, 1989, that he would be ‘thrown off the job’ if he did not pay his dues.” Moreover, Buffington admitted that he was fully aware of his responsibilities regarding the union dues payments including the amount due, the period covered by the dues payment required, and the 15-day grace period.

The issue in this case then is whether the Respondent Union violated the Act by failing to give Buffington an adequate opportunity to satisfy his dues obligations. In *Teamsters Local 122 (August A. Busch)*, supra at 1042, the Board stated:

Respondent’s failure in this respect, coupled with the failure to give the Charging Parties an adequate opportunity to make payment,<sup>3</sup> constitutes a breach of Respondent’s duty to its members to treat them fairly.

<sup>3</sup> . . . However, this conclusion is not to be construed as a determination that any particular time limit would be reasonable.

Thus, it appears that a determination of what is an “adequate opportunity” for an employee to make payment of dues owed before a union may lawfully seek the employee’s discharge under a union-security clause, in any given case depends on the facts present therein.<sup>23</sup>

The evidence here shows that although the Respondent Union gave Buffington notice of the amount and the months

for which dues payments were owed, it was not until Monday, October 16, 1989, that Shop Steward Rougier informed him that he might lose his job if he failed to pay his dues by the next day, October 17, 1989. However, it was not until that Tuesday, October 17, 1989, that very next day, that Buffington was unequivocally advised by the Respondent Union’s business agent, Fulgieri, that he would be taken off the job if he did not make his dues payment by Wednesday, October 18, 1989, and not be allowed to return to work until he did so. According to his uncontradicted testimony in this respect, Buffington told Fulgieri during this telephone conversation on October 17, 1989, that payday was Friday, October 20, 1989, intimating that he would pay his dues arrearage on that day to the Respondent Union, which offer Fulgieri rejected.<sup>24</sup> Buffington was actually “removed” from his job on the Acrom construction site on October 18, 1989 when he failed to pay his union dues by the deadline set for that day.

The Respondent Union’s “strict fiduciary duty,”<sup>25</sup> to deal fairly with employees before initiating any adverse action against them obligated it to provide Buffington with an adequate opportunity to meet his union dues requirement following appropriate notice of such requirements.<sup>26</sup> I do not find that under the circumstances present in this case, 1 or 2 days’ notice constituted an “adequate opportunity” afforded Buffington to make the required dues payments.<sup>27</sup> Accordingly, the Respondent Union failed to meet its fiduciary responsibility in this regard.

However, there is another element which must be considered in deciding this issue. As the Board stated in *Western Publishing Co.*, 263 NLRB 1110 at 1112–1113 (1982):

Our inquiry, however, does not end with this finding. The Administrative Law Judge based his dismissal of the complaint in part upon the evidence of the employee’s neglect of their dues obligations. The protections enumerated above were “never intended to be so rigidly applied as to permit a recalcitrant employee to profit from his own dereliction in complying with his obligations.”<sup>18</sup> Rather, these steps are intended to ensure that “a reasonable employee will not fail to meet his obligation through ignorance or inadvertence, but will do so only as a matter of conscious choice.”<sup>19</sup> Thus when it is shown that the employee has “willfully and deliberately sought to evade his union-security obligations,”<sup>20</sup> the Board will excuse a union’s failure to fully comply with the notice requirements.<sup>21</sup>

<sup>18</sup> [*Produce Workers Local 630*] (*Ralphs Grocery Company*), 209 NLRB 117, 124 (1974).

<sup>19</sup> *Valley Cabinet & Mfg., Inc.*, 253 NLRB 98, 108 (1980).

<sup>20</sup> *Produce Workers Local 630*, supra at 125.

<sup>21</sup> See, e.g., *Big Rivers Electric Corp.*, 260 NLRB 329 (1982); *Produce Workers Local 630*, supra.

In the present case, however, I do not find that Buffington’s conduct rises to the level of bad faith or a will-

<sup>24</sup> Although Fulgieri testified in this proceeding, he did not dispute Buffington’s testimony regarding this.

<sup>25</sup> *Hemsley-Spear, Inc.*, 275 NLRB 262 (1985).

<sup>26</sup> *Western Publishing Co.*, supra, and cases cited therein.

<sup>27</sup> See for example, *United Metaltronics Local 955 (Pharmaseal Laboratories)*, supra; *Teamsters Local 122 (August A. Busch)*, supra.

<sup>21</sup> *Western Publishing Co.*, 263 NLRB 1110 (1982), and cases cited therein. Also see *Teamsters Local 13 (Mobile Pre-Mix Concrete)*, 268 NLRB 930 (1984).

<sup>22</sup> *R. H. Macy & Co.*, 266 NLRB 858 (1982); *Teamsters Local 122 (August A. Busch)*, 203 NLRB 1041 (1973), enf’d. 502 F.2d 1160 (1st Cir. 1974); *Hotel Employees Local 568 (Philadelphia Sheraton)*, supra.

<sup>23</sup> Also see *R. H. Macy & Co.*, supra; *United Metaltronics Local 955 (Pharmaseal Laboratories)*, 254 NLRB 601 (1981).

ful and deliberate attempt to avoid his dues obligation. Although Buffington was less than diligent in ignoring the requests for payment of his dues during the 15-day grace period and before, when finally confronted with the threat of loss of his job unless he paid the dues owed, he requested until payday, Friday, October 20, 1989, 2 days past the Respondent Union's deadline of October 18, 1989, to satisfy his dues obligations. Additionally, after visiting the Board's Region 29 offices on October 17, 1989, that same evening Buffington mailed a check to the Respondent Union for what he apparently in good faith but erroneously believed to be a sufficient partial payment of his dues arrearage which would enable him to remain on the job until he fully paid his dues. Although the check was not received by the Respondent Union until after the October 18, 1989 deadline, Buffington's action in mailing such payment to the Respondent Union before any request to the Employer for his discharge had been made would mitigate against the claim that Buffington was deliberately seeking to avoid his obligations.<sup>28</sup>

As the Board stated in *Western Publishing Co.*, supra at 1113:

We do not condone employee neglect of lawful financial obligations to a collective-bargaining representative. On the other hand, we do not consider it onerous to require that a union meet minimum notice standards in a matter of such importance to employees.

This would extend to the requirement that a union give the employee an adequate opportunity to make payment.

On the basis of the above, I find that, although Buffington was remiss in not paying his dues in a timely manner, there is no evidence to indicate that he consciously and willfully sought to evade his financial obligation to the Respondent Union.<sup>29</sup>

The Respondent Union also asserts that the 8(b)(2) allegation must be dismissed based on the insufficiency of the evidence. The Respondent Union alleges in its brief that:

The complaint alleged that the Union caused Acrom to discharge Buffington. Yet the record is devoid of any evidence establishing a direct communication between the Union and Acrom regarding Buffington. Buffington testified concerning certain statements purportedly made to him by a foreman of Acrom. These statements, however, are not admissible to establish the truth of the statements as against the Union. . . . In a similar case, where a union was alleged to have caused an employer to discriminate against an employee in connection with employment, the Board held,

As noted above, no official of the Company which the Union allegedly caused to refuse to hire Edwards testified; in our opinion this leaves a significant gap in the General Counsel's case.

<sup>28</sup> *R. H. Macy & Co.*, supra.

<sup>29</sup> This case is clearly distinguishable from *Big Rivers Electric Corp.*, 260 NLRB 329 (1982), *John J. Roche & Co.*, 231 NLRB 1082 (1977), and *Produce Workers Local 630 (Ralphs Grocery)*, supra, relied on by the Respondent Union, because the evidence in those cases clearly revealed that the employees in question deliberately avoided their financial obligations.

*Railway Clerks, Local 1902 (Safety Cabs, Inc.)*, 180 NLRB 126 (1969), similarly, a significant gap exists in the matter at hand. The General Counsel has failed to meet his burden of proving that Buffington was discharged because of the Union. Hence no violation of Section 8(b)(2) has been proven.

I do not agree.

The evidence here shows that on October 17, 1989, Fulgieri unequivocally informed Buffington that if he failed to pay his dues arrearage by October 18, 1989, he would be "removed from the job," clearly that he would be terminated if he did not pay his dues and obtain a current union work card. On Buffington reporting for work the next day, October 18, 1989, he was met by Fulgieri and Rougier, and Fulgieri told Buffington that because he did not have a current union card he could not work on the jobsite. About 20 minutes later he observed Fulgieri and Rougier talking to the Acrom foreman on the job who then approached Buffington and told him to leave the construction site, which only could be construed in the context of Buffington being taken off the job, as a layoff or discharge in fact. Buffington asked the foreman if he was acting pursuant to Fulgieri's instructions and the foreman responded affirmatively. Although both Fulgieri and Rougier testified here, they did not refute Buffington's account of what occurred nor deny that as agents of the Respondent Union they had sought Buffington's removal from the job until he paid his dues. Neither did Fulgieri nor Rougier deny that they had caused Buffington's resulting discharge by the Employer. If the above does not clearly establish that the Respondent Union attempted to cause and did cause the Employer to discharge Buffington, as I believe it does, at the very least this evidence raises a strong inference that the Respondent Union was responsible for Buffington being removed from his job with Acrom, which the Respondent Union has failed to rebut or refute here.

Contrasting what happened in the instant case with the occurrences in *Railway Clerks Local 1902 (Safety Cabs)*, supra, on which the Respondent Union relies, clearly illustrates why the Board found no violation of Section 8(b)(2) of the Act in the *Railway Clerks* case, and why I will find such a violation present in the instant case. In *Railway Clerks*, the Board stated:

[T]hat the only evidence adduced with regard to the Company's position on employing Edwards came from his testimony of conversations he had with the Company officials, in which, the Trial Examiner found, it was intimated that the Union was keeping Edwards from working. Not only does this fail to assert a positive statement to this effect, but no company official testified at the hearing to substantiate Edwards claim. The Respondents contend that such testimony is hearsay as regards the Respondent and cannot be used as evidence of the Respondent's alleged attempt to cause the Company to refuse to employ Edwards. We agree.

However, in the instant case although it is true that no official of Acrom testified at the hearing to substantiate Buffington's testimony that the job foreman had told him that he was being taken off the job by direction of the Re-

spondent Union's business agent, Fulgieri, this assertion was still a "positive statement to this effect."

Moreover, in *Railway Clerks* the Board found that the only nonhearsay evidence which showed that the Union caused the Employer to refuse employment to Edwards was Edwards' conversation with Fitzgibbons, the Union's director of organization in which Fitzgibbons stated that Company Vice President Marvin had spoken to him, "about giving Edwards a week's work at the airports, which he broke his promise to me. . . . I told the men about it, and they voted no. . . ." Fitzgibbons also said that if Edwards assisted the Union in raiding companies under Teamsters bargaining contracts, Fitzgibbons would "[S]ee what I can do about getting your job back."<sup>30</sup> However, in the case at hand, the evidence unequivocally shows that both Fulgieri and Rougier threatened Buffington with removal from the job if he failed to pay his dues arrearage by October 18, 1989, constituting a clear, precise, and positive statement of the intentions of the Respondent Union.

Additionally, the Board found in *Railway Clerks* that the remainder of the evidence therein established only that there was considerable ill will toward Edwards because of his activities during the Union's election campaign, and that the union membership and officers may have been reluctant to receive him back into the Union; that under the collective-bargaining agreement between the Company and the Union, "that reluctance was no impediment to hiring Edwards"; and that the Trial Examiner in deciding this issue had made no reference to unrefuted testimony that indicated that the Union was unconcerned about whether or not Edwards returned to work for the Employer, and had failed to mention that the Union's president, Lytwinnick, had told Company Vice President Marvin that the Union had "no objection whatsoever to the employment of Edwards by the Employer." The Board continued therein:

In conclusion, we are of the opinion that the non-hearsay evidence relied on, for the most part, shows only that some of the union officers and membership were neither overly fond of Edwards, nor anxious for him to become a union member. As noted above no official of the Company which the Union allegedly caused to refuse to hire Edwards testified; in our opinion, this leaves a significant gap in the General Counsel's case. Indeed, on the record as a whole, the only evidence which tends to support the 8(b)(2) allegation is the statement Fitzgibbons made to Edwards. In view of the testimony discussed above, we do not think that statement sufficient; we are constrained to find that the General Counsel has not carried his burden of proving, by a preponderance of the evidence, that the Respondents caused the Company to refuse employment to Edwards.

However, in the instant case, the uncontradicted evidence shows that on the day set by the Respondent Union as being the deadline for Buffington to pay his dues or be removed from the job, Union Business Agent Fulgieri appears on the jobsite, determines that Buffington has failed to make his

dues payments, and subsequently along with Shop Steward Rougier is observed speaking to the Acrom job foreman. Immediately thereafter, the foreman instructs Buffington to leave the job acknowledging that this action was taken at Fulgieri's behest. Certainly the above circumstances evidences that the Respondent Union clearly indicated its intent to seek Buffington's discharge from his position until he paid his dues arrearage, and indeed took the necessary steps to accomplish its intent. While the Respondent Union did not actually acknowledge having caused Buffington's discharge, it never denied having done so in the evidence. Unlike the *Railway Clerks* case the nonhearsay evidence establishes the above and the foreman's statement of the Respondent Union's complicity in Buffington's dismissal only reinforces this. Thus the fact that no official of Acrom (the foreman would be the proper witness) testified in this case *does not* leave "a significant gap in the General Counsel's case. Indeed, the record as a whole supports the 8(b)(2) allegation.

I therefore find that the General Counsel has carried his burden of proving by a preponderance of the evidence, that the Respondent Union attempted to cause and did cause the Employer here to discharge Buffington.

Lastly, the Respondent Union asserts that the "Legislative History is Contrary to the Board's Use of the Fiduciary Test," that it was never the intent of Congress to place such a heavy burden on unions. In support thereof the Respondent Union states in its brief that:

A research of the legislative history fails to disclose the use of the term fiduciary relationship in connection with Section 8(b)(2) of the Act. Rather, as noted above, the common references to arbitrary conduct tends to run through the debates. It is clear from the legislative history that congress never intended to create a test of a fiduciary relationship in connection with a union's conduct towards its members *vis a vis* section 8(b)(2). Congress by its use of the commonly referred to concepts has determined that violations of Section 8(b)(2) require an arbitrary act. . . . Even under Section 8(b)(2) the Board, in all other situations utilizes the arbitrary and capricious standard rather than the fiduciary standard. . . . Hence the Board has created an artificial standard in connection with the obligations that a union owes to rank and file employees that it represents. This artificial distinction has no basis in the statute or in the legislative history of the Act. It should properly be abandoned. . . . It is respectfully urged that the Board abandon this test and revert to the correct test of whether a union's conduct towards employees when a request for their removal is made constitutes an arbitrary act. In the case at hand there is no evidence of arbitrary conduct by the Union. The complaint therefore should be dismissed.

I do not agree.

In *Hotel & Club Employees Local 568 v. NLRB*, 320 F.2d 254, 258 (3d Cir. 1963), enfg. 136 NLRB (1962), the United States Court of Appeals for the Third Circuit stated:

The comprehensive authority vested in the union, as the exclusive agent of the employees, leads inevitably to employee dependence on the labor organization. There necessarily arises out of this dependency a fidu-

<sup>30</sup> The Trial Examiner in *Railway Clerks* credited Edwards testimony regarding this conversation over Fitzgibbons' notwithstanding Fitzgibbons denial therein that he had made these statements.

ciary duty that the union deal fairly with employees. . . . At the minimum, this duty requires that the union inform the employee of his obligations in order that the employee may take whatever action is necessary to protect his job tenure.

The Board has accepted this principle and has consistently held that labor organizations seeking to enforce valid union-security provisions have a fiduciary duty to advise employees of their contractual obligations to maintain membership in good standing before initiating any adverse action against them.<sup>31</sup> Moreover, both the courts and the Board have accepted this as a salutary rule.

As an administrative law judge I am bound to follow court<sup>32</sup> and Board law. Any request that the Board abandon an established principle, rule, or test is necessarily solely within the purview of the Board's consideration and decisional process, of course subject to judicial review. Therefore, although I feel that the Respondent Union has failed to establish any significant reason for the Board to abandon its fiduciary duty test, I make no ruling as regards its motion to dismiss on this ground.<sup>33</sup>

From all the foregoing, I find and conclude that the Respondent Union violated Section 8(b)(1)(A) and (2) of the Act when it caused and attempted to cause Buffington's discharge by the Employer for his failure to pay dues without giving him a reasonable period of time to meet this obligation.

#### IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of the Respondent Union set forth in section III, above, found to constitute unfair labor practices occurring in connection with the operations of the Employer described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow thereof.

#### V. THE REMEDY

Having found that the Respondent Union has engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) and (2) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent Union unlawfully caused the termination of Jay Buffington, I will recommend that it be ordered (1) to notify the Employer that it has no objection to the reemployment of Jay Buffington; (2) to seek Jay Buffington's reinstatement with the Employer; and to make Jay Buffington whole, with interest, for any loss of earnings and other benefits he may have suffered by reason

of the discrimination against him from the date of his termination until he is reinstated to his former or substantially equivalent position or he obtains substantially equivalent employment. Loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest shall be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>34</sup>

I shall also recommend that the Respondent Union be ordered to remove from its files any reference to Buffington's unlawful termination and shall be required to notify Buffington, in writing, of its actions and inform him that his unlawful termination shall not be used as a basis for future action against him. Further, the Respondent Union shall be required to ask the Employer, Acrom Construction Service Co., Inc., to remove from its files any reference to Buffington's termination and shall notify Buffington that it has asked this Employer to do so.<sup>35</sup>

#### CONCLUSIONS OF LAW

1. Acrom Construction Service Co., Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By attempting to cause and causing Acrom Construction Service Co., Inc. to discharge Jay Buffington for his failure to pay his quarterly dues without providing him an adequate opportunity (reasonable period of time) to undertake the action necessary to protect and retain his employment, the Respondent Union, United Brotherhood of Carpenters and Joiners of America, Local 296, has engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and (2) and Section 2(6) and (7) of the Act.<sup>36</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>37</sup>

#### ORDER

The Respondent, United Brotherhood of Carpenters and Joiners of America, Local 296, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Causing or attempting to cause Acrom Construction Service Co., Inc. to discharge or otherwise discriminate against Jay Buffington or any other employee for failure to tender to the Respondent Union periodic dues, without giving them an adequate or reasonable period of time to pay such dues.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

<sup>31</sup> See for example *Hemsley-Spear, Inc.*, supra; *Teamsters Local 122 (August A. Busch)*, supra; *Conduction Corp.*, supra.

<sup>32</sup> Decisions of the United States Supreme Court.

<sup>33</sup> It is my belief that the basic underlying proposition in both the courts and Board rulings in this area is fairness; therefore, under either test this would require adequate notice and an opportunity to undertake the action necessary to protect and retain his employment when a union seeks an employee's discharge for failure to pay his dues.

<sup>34</sup> I recognize that this Employer is in the building construction industry which could give rise to questions of job longevity, job availability, etc., but any such problems can properly be addressed at the compliance stage of these proceedings.

<sup>35</sup> *R. H. Macy & Co.*, supra.

<sup>36</sup> *Laborers Local 334 (Burdco Environmental)*, 303 NLRB 350 (1991).

<sup>37</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Notify the Employer that it has no objection to the re-employment of Jay Buffington and seek Buffington's reinstatement with Acrom Construction Service Co., Inc.

(b) Make Jay Buffington whole, with interest, for any loss of earnings and other benefits he may have incurred as a result of the discrimination against him. Backpay shall be computed in the manner prescribed in the remedy section of this decision.

(c) Remove from its files, and ask the Employer to remove from its files, any reference to Jay Buffington's unlawful discharge and notify him, in writing, that this has been done and that evidence of this action shall not be used as a basis for future action against him.

(d) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."<sup>38</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Forward a sufficient number of signed copies of the notice to the Regional Director for Region 29 for posting by Acrom Construction Service Co., Inc., at its place of business in New York, New York, in places where notices to employees are customarily posted, if the Employer is willing to do so.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records

and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT cause or attempt to cause Acrom Construction Service Co., Inc. to discharge or otherwise discriminate against Jay Buffington or any other employee for failure to tender periodic dues without giving him a reasonable period of time to do so.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL notify Acrom Construction Service Co., Inc. that we have no objection to the reemployment of Jay Buffington and WE WILL seek his reinstatement with the Employer.

WE WILL make Jay Buffington whole, with interest, for any loss of earnings and other benefits he may have incurred by reason of our discrimination against him.

WE WILL remove from our files and WE WILL ask the Employer to remove from its files any reference to Jay Buffington's discharge and WE WILL notify him, in writing, that this has been done and that evidence of this action shall not be used as a basis for future action against him.

UNITED BROTHERHOOD OF CARPENTERS AND  
JOINERS OF AMERICA, LOCAL 296

<sup>38</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."